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No. 84-363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NORTHEAST BANCORP, INC., UNION TRUST COMPANY AND CITICORP,

Petitioners,

v.

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *et al.*

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENT BANK OF BOSTON CORPORATION IN OPPOSITION TO PETITION

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39 pp

QUESTIONS PRESENTED

In the Douglas Amendment to the Bank Holding Company Act, Congress purposefully established a general *federal* statutory prohibition on the acquisition of each state's local banks by out-of-state bank holding companies, thereby effectively partitioning the nation into separate state units for purposes of such acquisitions. In the same statutory provision, however, Congress also expressly conferred upon the states plenary authority to remove the general federal prohibition on interstate acquisitions "to the degree" they deem appropriate (see p. 12, below). Congress — in the words of a co-sponsor of the Douglas Amendment — considered acquisitions of local banks by out-of-state bank holding companies to be "a matter of primary concern to the State governments" and thus "an area best left to their discretion" (see p. 12, below).

Exercising the plenary authority conferred in the Douglas Amendment, Massachusetts enacted a statute that permits the acquisition of its local banks by bank holding companies based in other New England states that afford Massachusetts holding companies comparable acquisition opportunities. Subsequently, Connecticut enacted a statute effecting a similar removal of the Douglas Amendment's general interstate prohibition with respect to its local banks. Against this background, the questions presented are:

1. Do the Connecticut and Massachusetts statutes exceed the scope of the authority conferred upon the states in the Douglas Amendment, which was enacted principally to enable the states to determine, in accordance with their own policies, the degree to which interstate bank holding company acquisitions of their local banks should be permitted and which reflects no congressional intent to limit this state authority?

2. Do the Connecticut and Massachusetts statutes, which were enacted pursuant to the plenary authority

granted to the states by Congress in the Douglas Amendment and which serve only to permit a form of interstate commerce that otherwise would be federally prohibited, constitute impermissible restrictions on interstate commerce that violate the Commerce Clause?

3. Do the Connecticut and Massachusetts statutes, which represent nothing more than an exercise of authority that Congress has conferred on the states in the Douglas Amendment and which neither create any new level of sovereignty nor in any way restrict federal authority, constitute improper state encroachment upon the federal structure that violates the Compact Clause?

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BRIEF OF RESPONDENT BANK OF BOSTON CORPORATION IN OPPOSITION TO PETITION

Respondent Bank of Boston Corporation, which was an intervenor in the court below, submits this brief in opposition to the petition for certiorari filed by Northeast Bancorp, Inc., Union Trust Company and Citicorp.[1]

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[1]The listing required for Bank of Boston Corporation by Rule 28.1 appears in Appendix A to this brief.

STATEMENT OF THE CASE

a. The Relevant Statutory Regime. Prior to 1956, a bank holding company could acquire banks located anywhere in the country, without advance regulatory approval and without regard to the location of the holding company. During this period, a number of holding companies established extensive interstate networks, acquiring banks located in communities outside their home states.[2] This interstate expansion of bank holding companies was viewed with considerable alarm in Congress, for it was perceived to threaten our longstanding tradition of local control of banking institutions.[3]

As a result, in the Bank Holding Company Act of 1956, Congress established a *federal* prohibition on interstate bank holding company acquisitions. Specifically, Congress provided that a bank holding company must obtain the approval of the Board of Governors of the Federal Reserve System ("the Board") before acquiring another banking organization.[4] And, in the so-called Douglas Amendment to the Bank Holding Company Act, Congress generally prohibited the Board from approving a bank holding company's acquisition of any bank located outside the holding company's home state.[5] Thus, as a matter of federal policy, Congress isolated each state from

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[2]See, *e.g.*, 102 Cong. Rec. 6858 (1956) (remarks of Senator Douglas) (describing interstate expansion of two Minneapolis-based bank holding companies and a California-based bank holding company).

[3]See, *e.g.*, H.R. Rep. No. 609, 84th Cong., 1st Sess. 2 (1955):

> "There has developed in this country . . . a conception of the independent unit bank as an institution having its ownership and origin in the local community . . . . Its activities are usually fully integrated with the local economic and social organization. The bank holding company threatens to destroy this democratic grassroots institution."

See also, *e.g.*, 102 Cong. Rec. 6857-60 (1956) (remarks of Senator Douglas); 101 Cong. Rec. 8028-29 (1955) (remarks of Mr. Patman).

[4]12 U.S.C. 1842(a).

[5]12 U.S.C. 1842(d) (A96).

every other state with regard to bank holding company acquisitions, purposefully departing from our general model of a unified national market.

Congress did not wish, however, to prevent the states from allowing interstate acquisitions of their local banks if they so desired; on the contrary, Congress was intent that the states should have authority to permit such acquisitions to the degree they wished (see p. 12, below). Accordingly, in the Douglas Amendment, Congress expressly provided that the Board may approve an interstate bank holding company acquisition if such acquisitions are "specifically authorized by the statute laws" of the state in which the bank to be acquired is located.[6] Congress did not limit this authority in any respect (see p. 13, below).

Since 1956, states have enacted statutes creating a variety of exceptions to the Douglas Amendment's general prohibition on interstate bank holding company acquisitions, typically removing the federal prohibition only to a limited degree (see pp. 15-16, below). In December 1982, Massachusetts enacted one state statute of this sort—a so-called reciprocal regional statute—in which it authorized bank holding companies based in any of the other New England states—Connecticut, Maine, New Hampshire, Rhode Island and Vermont—to acquire Massachusetts banking organizations if the acquiring holding company's home state affords comparable acquisition opportunities to Massachusetts banking organizations.[7] Connecticut passed a reciprocal regional statute in June 1983, similarly permitting the acquisition of its local banks by bank holding companies based in the other New England states.[8]

The Massachusetts Act and Connecticut Act each resulted from independent action by the respective State's legislature.

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[6] *Id.*

[7] Mass. Gen. L. Ann. ch. 167A, § 2 ("the Massachusetts Act") (A101-02).

[8] Conn. Act No. 83-441, § 2 (1983) ("the Connecticut Act") (A99).

Neither State was obligated to pass such a statute; neither State made any agreement with the other in doing so; and each State remains free to repeal its statute at any time (A97-A102).[9]

Furthermore, neither Act has any effect on the Douglas Amendment's general prohibition on interstate acquisitions by bank holding companies based outside New England. Non-New England holding companies continue to be barred from acquiring Connecticut and Massachusetts banks not by state law, but by the federal Douglas Amendment.

b. The Relevant Transactions and Board Proceedings. Following passage of the Connecticut and Massachusetts Acts, applications were filed seeking Federal Reserve Board approval of three separate interstate acquisitions, each involving a Connecticut banking organization and a Massachusetts banking organization.[10] In opposing the applications, petitioners did not deny that the Connecticut and Massachusetts Acts in fact make possible a form of interstate commerce—interstate bank holding company acquisitions—that the Douglas Amendment otherwise would prohibit, but they nonetheless contended that

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[9]Each of the other New England states has chosen a very different approach to interstate banking. New Hampshire and Vermont have not enacted any legislation removing the Douglas Amendment's general prohibition on interstate acquisitions of their local banks. Maine has authorized essentially unrestricted acquisition of its banks by out-of-state holding companies. Me. Rev. Stat. Ann. tit. 9 (Supp. 1984). And Rhode Island has enacted a statute that removes the Douglas Amendment's general prohibition on a regional basis for two years ending June 30, 1986, and thereafter on a nationwide reciprocal basis. R.I. Gen. Laws §§ 19-30-1, 19-30-2.

[10]The three transactions were: the merger of Bank of New England Corporation, a Massachusetts bank holding company, and CBT Corporation, a Connecticut bank holding company; the acquisition of Arltru Bancorporation, a Massachusetts banking organization, by Hartford National Corporation, a Connecticut bank holding company; and the acquisition of Colonial Bancorp, Inc., another Connecticut bank holding company, by Bank of Boston Corporation, a Massachusetts bank holding company.

the Acts impermissibly restrain interstate commerce in violation of the Commerce Clause.[11] In addition, petitioners argued that the Acts give rise to an interstate compact, to which Congress has not consented, that violates the Compact Clause.[12]

After thoroughly considering these objections, the Board approved the transactions, determining that the Connecticut and Massachusetts Acts provide the specific state statutory authorization required by the Douglas Amendment (A37, A74, A83) and finding no adequate basis for declaring the Acts unconstitutional (A38-A41, A49-A71, A74-A75, A83). While questioning whether the Acts could be sustained under the Commerce Clause absent the authority granted to the states in the Douglas Amendment, the Board concluded, based on a lengthy review of the Amendment's language, history and prior construction (A61-A71), that the states are not limited to permitting entry either by all out-of-state holding companies or by none (A71). The Board thus recognized the plenary nature of the states' authority to remove the Amendment's general prohibition on interstate acquisitions of their local banks to the degree the states choose.

As for the Compact Clause, the Board viewed the Acts as "part of an effort to create a regional banking zone," but it did not find that the New England states had entered into any actual agreement or confederation (A51-A52). Moreover, the Board recognized that, even if the Acts were considered part of an "implicit" compact or agreement, they would violate the Compact Clause only if they involved "an enhancement of state powers at the expense of federal supremacy" (A52). In this regard, the Board found, based on its detailed analysis of the Douglas Amendment's history and prior construction (A62-A71), that the Amendment constitutes "a renunciation of

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[11]U.S. Const. Art.I, § 8, cl.3.

[12]U.S. Const. Art.I, § 10, cl.3.

federal interest in regulating the interstate acquisitions of banks by bank holding companies" (A52).

c. The Decision Below. On judicial review, the Second Circuit unanimously sustained the Board's orders approving the three transactions (A21).[13] In its decision, the Court of Appeals first considered the scope of the Douglas Amendment, rejecting petitioners' contention that the states have only limited authority to remove the Amendment's general prohibition on interstate acquisitions (A29).

Having recognized the plenary nature of the states' authority under the Amendment, the Court of Appeals had no difficulty disposing of petitioners' constitutional claims. It found that, under this Court's established precedents, Congress' grant of authority to the states in the Douglas Amendment renders the Connecticut and Massachusetts Acts "'invulnerable' to challenge" under the Commerce Clause (A30-A31).[14] As for the Compact Clause, the court—like the Board—found no actual agreement or confederation of states; and it concluded that, even if the Acts were "treated as a compact," there would be no threat of encroachment upon the "just supremacy of the United States" that would violate that Clause (A31-A32).

SUMMARY OF ARGUMENT

Petitioners naturally claim (*e.g.*, Pet. 9-15) that the Connecticut and Massachusetts Acts raise important questions of federal policy with respect to interstate banking. But the policy issues raised by petitioners were clearly and unequivocally

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[13]While petitioner Citicorp sought review of all three Board orders, petitioners Northeast and Union Trust sought review only of the Bank of New England/CBT order. The petitions for review were consolidated by the Second Circuit prior to decision.

[14]The court recognized as well that the Connecticut and Massachusetts Acts facilitate interstate bank holding company acquisitions that the Douglas Amendment otherwise would prohibit and that the Acts thus should serve to promote, rather than to restrict, interstate commerce (A29).

resolved by Congress nearly thirty years ago when it passed the Douglas Amendment.

In enacting the Douglas Amendment, Congress was determined to halt the unrestrained interstate expansion of bank holding companies and to ensure that the states would have full control over the acquisition of their local banks in accordance with their own local policies. As a co-sponsor of the Douglas Amendment made clear, the "expansion of bank holding companies across state lines" was considered to be "a matter of primary concern to the State governments" and "an area best left to their discretion" (see p. 12, below). Congress in the Douglas Amendment therefore erected a general *federal* barrier to interstate bank holding company acquisitions and granted the states plenary authority to remove that barrier—in Senator Douglas' own words—"to the degree" that the states might choose.

Thus, contrary to petitioners' repeated assertions (*e.g.*, Pet. 9, 16), Congress—not the states—purposefully put aside in this area usual federal principles of economic unity and determined that state policies alone shall govern. The Board itself recently reaffirmed that Congress' essential intent in the Douglas Amendment was to "allow[] the states to apply their own policies . . . to the acquisition [of their local banks] by out-of-state bank holding companies" (see p. 17, below). And the only other Court of Appeals to consider the Douglas Amendment has recognized—like the court below—that Congress' very purpose in the Douglas Amendment was to empower "the *states* . . . to control the expansion of bank holding companies across state lines so that such expansion *would not contravene state policy*" (see pp. 17-18, below). Petitioners do not point to any conflicting Board or court precedent, nor is there any.

In light of Congress' established purpose in the Douglas Amendment, this case presents no significant constitutional issue. Under the Court's settled precedents, there is no impermissible interference with interstate commerce in violation of the Commerce Clause, where, as here, Congress expressly

granted the states full authority to control the relevant aspect of interstate commerce (see pp. 19-20, below); and there is no conceivable state encroachment upon the federal structure in violation of the Compact Clause, where, as here, the states have done nothing more than exercise authority that Congress itself has conferred (see pp. 24-25, below). The decision below sustaining the Connecticut and Massachusetts Acts on the basis of the Douglas Amendment thus is wholly in accord with this Court's precedents.

Petitioners' present challenges would *not* enhance interstate commerce or restore a unitary federal system in the area of interstate banking; on the contrary, because of the Douglas Amendment's general federal prohibition on interstate bank holding company acquisitions, invalidation of the Connecticut and Massachusetts Acts would mean *less* interstate commerce and a *less* cohesive interstate banking system (see p. 22, below)—as the court below fully appreciated (A29). Only Congress can restore the general federal model from which it chose to depart in 1956. In these circumstances, the decision below presents no issue meriting review by this Court.[15]

REASONS FOR DENYING THE WRIT

I. In the Douglas Amendment, Congress Granted the States Plenary Authority to Determine the Degree to Which, If at All, Interstate Bank Holding Company Acquisitions Shall Be Permitted.

Petitioners' entire challenge is premised on the notion that the Douglas Amendment effected no departure from our gen-

[15]Amicus Chase Manhattan suggests (Br. 19 n.26) that this case warrants review to consider whether the challenged Acts should be subjected "to heightened equal protection scrutiny." This Court has repeatedly held, however, that such economic regulation is to be judged solely under the rational relationship test, which the Court of Appeals properly applied (A32-A33). See, *e.g.*, *New Orleans* v. *Dukes*, 427 U.S. 297, 303-04 (1976) (per curiam). In any case, petitioners have chosen not to present any equal protection question for review (cf. Pet.I) and therefore no such question is now before the Court. See, *e.g.*, *United States* v. *Bass*, 404 U.S. 336, 339 n.4 (1971); *Mazer* v. *Stein*, 347 U.S. 201, 206 n.5 (1954).

eral model of a unified national market and that interstate bank holding company acquisitions are subject to usual principles of free trade among the states. Nothing could be further from the truth.

1. In adopting the Douglas Amendment in 1956, Congress purposefully put aside our general federal model. Senator Douglas of Illinois and many others in Congress were extremely concerned with the uncontrolled expansion of bank holding companies across state lines.[16] They were determined to bar such expansion *as a matter of federal law.*[17]

Therefore, in the Douglas Amendment, Congress established a general federal prohibition on interstate bank holding company acquisitions (see p. 2, above). By doing so, Congress—not any state—effectively partitioned the nation into separate state units and thereby, as petitioners have chosen to describe it (*e.g.*, Pet.9), "balkanized" the entire nation for purposes of interstate banking.[18] Such renunciation of usual federal principles of economic unity was not an unintended result; Congress was fully apprised regarding the consequences of its action.

Thus, the Douglas Amendment was opposed on the specific ground that it would effectively "require discrimination in interstate commerce," permitting bank holding companies to make acquisitions within a state if they are based there, but

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[16]See, *e.g.*, 102 Cong. Rec. 6857-58 (1956) (remarks of Senator Douglas); *id.* at 6861-62 (remarks of Senator Payne); 101 Cong. Rec. 8028 (1955) (remarks of Mr. Patman). Because the Douglas Amendment was added to the Bank Holding Company Act of 1956 on the Senate floor, its legislative history consists entirely of floor discussion.

[17]See, *e.g.*, 102 Cong. Rec. 6859 (1956) (remarks of Senator Douglas); *id.* at 6862 (remarks of Senator Payne).

[18]As Senator Douglas explained on the Senate floor, the Amendment's "immediate practical effect" was "to bar the expansion of bank holding companies across State lines." 102 Cong. Rec. 6860 (1956). See also *id.* at 6859; *id.* at 6860 (remarks of Senator Bennett).

prohibiting acquisitions in the same state by bank holding companies located elsewhere.[19] Such an approach was said to be "out of harmony" with the precepts that generally underlie our nation's economic system.[20] Nonetheless, the Amendment was adopted.

The Douglas Amendment, with its general prohibition on interstate acquisitions, does indeed reflect an unusual departure from our general federal model. But it is for this very reason that petitioners' reliance on ordinary Commerce Clause principles entirely misses the mark. The court below clearly recognized as much (A28-A32).

2. In putting aside our general federal model in the Douglas Amendment, Congress did not merely decide that interstate bank holding company acquisitions should be federally barred. It also specifically determined that the states should be empowered to determine the permissibility of such acquisitions in accordance with their own particular policies.

The interstate expansion of bank holding companies that led to passage of the Douglas Amendment was viewed as a serious and direct threat to our longstanding tradition of local control over banking matters (see p. 2, above).[21] The House, however, initially passed a bill that did not provide for state control of interstate bank holding company acquisitions; the House bill

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[19]*Id.* at 6860 (1956) (remarks of Senator Bennett).

[20]*Id.*

[21]This Court previously has recognized that, "both as a matter of history and as a matter of present commercial reality, banking and related financial activities are of profound local concern." *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 38 (1980). See also *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321, 358 (1963). States often are concerned, for example, that the loss of local control over their banks will diminish the willingness of such institutions to meet the particular needs of the communities in which they are located. In addition, substitution of out-of-state ownership for local control may impair a state's ability to regulate its own banks.

would have prohibited *all* such acquisitions.[22] In the Senate, the House bill was viewed as an "unwarranted interference with States' rights."[23] It was recognized that there might well be situations in which "such expansion was welcomed by the State involved."[24]

Within this context, the Douglas Amendment was a logical compromise, designed to empower the states to permit acquisition of their own local banks by out-of-state holding companies to the extent that they might wish to do so. Thus, as this Court previously has recognized, Congress in the Douglas Amendment did not merely establish a general federal prohibition on interstate acquisitions; it also expressly "*granted to the States . . . authority* to create *exceptions* to [the] general prohibition, that is, to *permit* expansion of banking across state lines where it otherwise would be federally prohibited."[25]

By this grant of authority, Congress clearly intended to allow state policies—and state policies alone—to determine the permissibility of out-of-state acquisitions of local banks and thus to afford the states the local control with which the Senate was concerned.[26] A co-sponsor of the Douglas Amendment empha-

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[22]See H.R. 6227, 84th Cong., 1st Sess. § 5(c) (1955).

[23]102 Cong. Rec. 6752 (1956) (remarks of Senator Robertson, floor manager for the Senate Committee bill, quoting Senator Maybank).

[24]102 Cong. Rec. 6755 (1956) (remarks of Senator Robertson). See also, *e.g.*, *id.* at 6752.

[25]*Lewis* v. *BT Investment Managers, Inc.*, *supra*, 447 U.S. at 47 (first emphasis added). On the Senate floor, Senator Douglas emphasized that, while no state then authorized interstate bank holding company acquisitions, his "amendment would leave the way open for States to make explicit provision for such purchases and acquisitions if they so decided." 102 Cong. Rec. 6860 (1956). See also, *e.g.*, *id.* (remarks of Senator Bennett).

[26]To ensure that interstate acquisitions would be permitted *only* when the relevant State so desired, Congress prescribed in the Amendment that such an acquisition must be "*specifically* authorized by the statute laws of the State . . ., *by language to that effect and not merely by implication.*" 12 U.S.C. § 1842(d) (emphasis added).

sized that "the control of expansion of bank holding companies across State lines . . . is a matter of primary concern to the State governments . . . ."[27] He therefore deemed such expansion "an area *best left to [the States'] discretion.*"[28]

Any possible doubt as to Congress' intent is dispelled by Senator Douglas' own explanation of his Amendment. The Senator repeatedly analogized the Amendment's purpose to the essential policy long embodied in the McFadden Act of 1927—the federal statute that permits national banks to establish branches within a state only to the extent that the state banks are authorized to do so by the state's own laws.[29] As Senator Douglas explained:

> "[B]y the McFadden Act and other measures, national banks have been permitted to open branches *only to the degree permitted by State laws* and State authorities."[30]

He then added:

> "[W]hat our Amendment aims to do is to carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act—namely, our amendment will permit out-of-State holding companies to acquire banks in other States *only to the degree that State laws expressly permit them* . . . ."[31]

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[27]102 Cong. Rec. 6862 (1956) (statement of Senator Payne).

[28]*Id.* (emphasis added). Given the perceived threat to local bank control posed by unchecked interstate bank holding company expansion, Senator Payne also stressed: "The purpose of [the Douglas Amendment] is to return to the States their traditional control over the activities of the State banks now nominally under the State's authority." *Id.*

[29]12 U.S.C. § 36(c). The McFadden Act also prevents national banks from branching across state lines.

[30]102 Cong. Rec. 6858 (1956) (emphasis added).

[31]*Id.* (emphasis added). Senator Douglas also stated: "[M]y Amendment is *in principle* almost identical with the present provision which governs branch banking." *Id.* at 6860 (emphasis added).

Thus, as had long been true of bank branching under the McFadden Act, Congress determined in the Douglas Amendment that state policy should be supreme in the area of interstate bank holding company acquisitions.[32] Moreover, Congress did not evidence any intent whatever to restrict the states' policy choices; neither the language nor the legislative history of the Douglas Amendment reflects any limitation upon the states' authority.[33] And Congress certainly did not indicate any concern that the states might adopt disparate policies regarding interstate acquisitions of their local banks.[34] Rather, having decided that usual federal principles of economic unity should not govern in this area, Congress expressly granted the states plenary authority to determine the degree to which, if at all, interstate bank holding company acquisitions should be

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[32]Cf., *e.g.*, *First Union Bank & Trust Co.* v. *Heimann*, 600 F.2d 91, 99 (7th Cir. 1979) ("The policymaking role in [the] area [of branch banking] is given to the state legislatures."); *Hempstead Bank* v. *Smith*, 540 F.2d 57, 59 (2d Cir. 1976) (The McFadden Act "incorporate[s] state standards into federal law.").

[33]Petitioners imply that Congress intended to preclude the states from distinguishing among out-of-state bank holding companies under the Douglas Amendment (Pet. 17-18), but their sole authority for this proposition is June *1955* House floor discussion of an earlier bank holding company bill that did not include the Douglas Amendment and that was not enacted (Pet. 18 n.22). Such material sheds no light on the proper interpretation of the Douglas Amendment, which was not added until a year later. Nor does the House Banking Committee's report demonstrate—as petitioners claim (Pet. 17 n.21)—that Congress rejected a "regional approach to interstate banking." Indeed, the House initially adopted an even more restrictive *absolute* prohibition on interstate acquisitions (see pp. 10-11, above); the Senate thereafter effectively modified this absolute prohibition by enacting the Douglas Amendment and thus empowering the states to permit interstate acquisitions to the degree they choose.

[34]In fact, in considering the Amendment against the backdrop of the McFadden Act, Congress was well aware of the disparate policies that the states had adopted with regard to branch banking: Senator Douglas noted, for example, that his home state of Illinois prohibited branch banking altogether, while New York had divided itself into ten separate zones for branching purposes. 102 Cong. Rec. 6858 (1956).

permitted within their own borders.[35] The Connecticut and Massachusetts Acts are nothing more than legitimate exercises of this plenary authority that Congress conferred on the states.

II. The Board and the Courts Have Consistently Recognized the States' Plenary Authority under the Douglas Amendment.

Petitioners cite no precedent indicating that the Connecticut and Massachusetts Acts are beyond the scope of the states' authority under the Douglas Amendment. Nor is there any. On the contrary, *every* administrative and judicial decision construing the Amendment supports the conclusion that Connecticut and Massachusetts have authority under the Amendment to remove the general federal prohibition on interstate acquisitions of their local banks solely in accordance with their own policies, however selective those policies may be.

1. The respective decisions of Connecticut and Massachusetts to remove the Douglas Amendment's general prohibition only to a limited degree are by no means unique. Because banking long has been viewed as an intensely local matter, the states have exercised extreme caution and selectivity in lowering the Douglas Amendment's interstate barrier and thereby subjecting their local banks to the vicissitudes of interstate banking. The Board, fully cognizant of Congress' purpose in the Douglas Amendment, has always sustained the states' choices.

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[35]The extensive legislative history partially set forth here disposes of petitioners' claim (Pet. 17) that Congress, in enacting the Amendment, was not concerned "with any state action that might be taken" to remove the general prohibition on interstate bank holding company acquisitions. That legislative history also makes clear that this is not—despite petitioners' assertions (Pet. 22)—a situation in which congressional intent is sought to be derived from "isolated fragments of legislative history." Cf. *New England Power Co.* v. *New Hampshire*, 455 U.S. 331, 341-42 (1982) (reliance "on a *single* statement made on the floor of the House" (emphasis added)).

It was not until 1972 that one state—Iowa—enacted legislation effecting any removal of the Douglas Amendment's general interstate prohibition. Iowa's statute effectively authorized acquisition of Iowa banks by only *one* out-of-state holding company that had owned banks in Iowa prior to the Douglas Amendment's enactment.[36] In approving two subsequent interstate acquisitions by the "grandfathered" holding company, the Board expressly rejected the contention that "Congress did not intend to allow State legislatures to *choose selectively* which out-of-State bank holding company could enter the State."[37] "'State legislative judgments'" were recognized to be determinative.[38]

Subsequent Board decisions under the Douglas Amendment consistently have adhered to this principle. For example, Florida—much like Iowa—has enacted legislation permitting only three out-of-state bank holding companies that previously controlled Florida banks or trust companies to acquire additional Florida banks.[39] The Board has expressly held that this selective lifting of the Douglas Amendment's general prohibition is consistent with the grant of authority made to the states in the Amendment.[40] Delaware has chosen to permit entry by out-of-state bank holding companies only on economic terms highly favorable to itself and its local banks, including specific restrictions on the type of business that an out-of-state company's local affiliate may perform, the number of offices it may oper-

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[36]Iowa Code Ann. § 524.1805.

[37]*Northwest Bancorporation*, 38 Fed. Reg. 21530, 21531-32 (1973) (emphasis added).

[38]*Id.* at 21532.

[39]Fla. Stat. Ann. § 658.29(3)(d).

[40]*NCNB Corp.*, 68 Fed. Res. Bull. 54, 56 (1982). See also, *e.g.*, *General Bancshares Corp.*, 69 Fed. Res. Bull. 802 (1983) (approving interstate acquisition under Illinois statute effectively authorizing only a *single* Missouri-based bank holding company to acquire Illinois banks).

ate, the amount of capital it must maintain, and even the number of local employees it must have.[41] Nonetheless, the Board consistently has found this Delaware statute to satisfy the Douglas Amendment's requirement for purposes of interstate acquisitions within the State.[42] And the State of Washington has determined that it will permit interstate acquisitions only when necessary to save a failing local banking organization.[43] Again, the Board has found this very limited removal of the general federal prohibition to be entirely in accord with the Douglas Amendment.[44]

Only recently, the Board, in denying approval of an interstate acquisition that would have *contravened* the relevant state's policies, expressly acknowledged that it has "*consistently* construed the Douglas Amendment to authorize the states to limit or restrict entry by out-of-state holding companies" in removing the Amendment's general prohibition on interstate acquisitions.[45] The Board has never found such state selectivity to be impermissible. It has always given effect to Congress' essential intent in the Douglas Amendment "of allowing the

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[41]Specifically, Delaware law prescribes that an out-of-state holding company may control a Delaware bank only if the bank (1) is "operated in a manner and at a location that is not likely to attract customers from the general public," (2) operates "no more than a single office in this State," and (3) has a minimum of $25 million in capital and surplus and employs "not less than 100 persons" in the State within one year after commencing business. Del. Code Ann. tit. 5, § 803 (Supp. 1982).

[42]See *Citicorp*, 68 Fed. Res. Bull. 499 (1982); *Provident Nat'l Corp.*, 68 Fed. Res. Bull. 194 (1982).

[43]Wash. Rev. Code ch. 30.04.230(a).

[44]*BankAmerica Corp.*, 69 Fed. Res. Bull. 568, 569 (1983).

[45]*Bank of New York Co.*, 70 Fed. Res. Bull. 527, 528 (1984), rejecting argument that Connecticut, by authorizing acquisition of its banks by holding companies based in other New England states, had in fact removed the federal barrier for *all* out-of-state bank holding companies, regardless of their location.

states to apply their own policies . . . to the acquisition [of their local banks] by out-of-state bank holding companies . . . ."[46]

The present case merely involves another application of the established principle that Congress has purposefully given the states control over the acquisition of their local banks. Here, as in prior cases, the Board found no support for the claim that the challenged statutes' partial removal of the Douglas Amendment's general prohibition exceeds the states' authority under the Amendment (A71). Thus, this case does not present any novel issue under the Douglas Amendment or any departure from established Board precedent; rather, it is in accord with the Board's longstanding and consistent construction of the Amendment as affording the states plenary authority to remove the general prohibition on interstate acquisitions selectively, based on their own local policies. This longstanding administrative construction weighs heavily against the need for any further review by this Court.[47]

2. The courts which previously have construed the Douglas Amendment have—like the Board—consistently recognized the states' plenary authority under the Amendment.

Thus, in the *Iowa Independent Bankers* case, the District of Columbia Circuit, in sustaining the Board's approval of the "grandfathered" holding company's acquisitions under Iowa law (see p. 15, above), deemed it "obvious" from the legislative history that Congress' purpose in the Douglas Amendment was "to assure that the states had sufficient power to control the expansion of bank holding companies across state lines so that

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[46]*Id.* at 528. See also *First Bank System, Inc.*, Fed. Res. Bd. (Sept. 21, 1984) (op. at 9): "[T]he purpose and legislative history of the Douglas Amendment . . . reflect an intent to preserve the authority of the states over the structure of banking within their borders . . . ."

[47]Cf., *e.g.*, *Board of Governors* v. *First Lincolnwood Corp.*, 439 U.S. 234, 248 (1978).

such expansion *would not contravene state policy*."[48] Given this congressionally established principle of *state* supremacy in the area of interstate bank holding company acquisitions, the court rejected the contention that the states have authority under the Douglas Amendment only "to extend the right to acquire in-state banks to all out-of-state bank holding companies or to prohibit such acquisitions entirely."[49] The court concluded that such a limiting construction would "rob" the states of their intended plenary authority to apply their own policies to interstate acquisitions of their local banks.[50]

The District of Columbia Circuit recently reaffirmed its determination in *Iowa Independent Bankers* that the states' authority under the Douglas Amendment is not limited.[51] Indeed, the court emphasized that in *Iowa Independent Bankers* the Douglas Amendment's legislative history was found to demonstrate "that Congress intended to allow a state to discriminate in admitting bank holding companies."[52] The court thus recognized once more Congress' intent that state policy should control entirely in this area.

This Court's previous construction of the Douglas Amendment also is consistent with the Board's and the lower courts' longstanding view that the states have plenary authority to remove the Douglas Amendment's general prohibition selectively in accordance with their own local policies. In the *Lewis* case, the Court clearly recognized that the Amendment authorizes the states "to create *exceptions*" to the general federal

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[48]*Iowa Indep. Bankers* v. *Board of Governors*, 511 F.2d 1288, 1297 (D.C. Cir.), *cert. denied*, 423 U.S. 985 (1975) (emphasis added).

[49]511 F.2d at 1296.

[50]*Id.* at 1297.

[51]*Conference of State Bank Supervisors* v. *Conover*, 715 F.2d 604, 615 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1708 (1984) (construing the International Banking Act in relationship to the Douglas Amendment).

[52]715 F.2d at 615.

prohibition on interstate acquisitions (see p. 11, above). Connecticut and Massachusetts have done precisely that in the present Acts.

The Acts are, in short, supported by every pertinent precedent construing the Douglas Amendment. Accordingly, the Second Circuit's application of the Douglas Amendment in this case presents no occasion for a grant of certiorari.

III. There Is No Conflict with This Court's Commerce Clause or Compact Clause Precedents.

Under this Court's decisions, Congress' grant of plenary authority to the states drains all substance from petitioners' Commerce Clause and Compact Clause claims. The court below plainly recognized this fact and thus was able to dispose of petitioners' constitutional objections in short order. Its decision presents no conflict with this Court's precedents that warrants any further review.

1. This Court has repeatedly held that Congress, in exercise of its plenary power over interstate commerce, may grant the states authority that they otherwise would not have to control an aspect of such commerce.[53] Any state action within the scope of such a congressional grant is "invulnerable to Commerce Clause challenge."[54] Only last Term, the Court established that "[t]here is no talismanic significance" to any particular test for determining when Congress has empowered the states to control a particular aspect of interstate commerce; rather, the essential inquiry simply is whether Congress has "unmis-

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[53]See, *e.g.*, *Lewis* v. *BT Investment Managers, Inc.*, *supra*, 447 U.S. at 44; *Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408 (1946); *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 315 (1945).

[54]*Western & S. Life Ins. Co.* v. *State Bd. of Equalization*, 451 U.S. 648, 653 (1981). Where Congress has granted states authority over an aspect of interstate commerce, the negative implications of the Commerce Clause—upon which petitioners entirely rely (*e.g.*, Pet. 14, 21)—have no more application to the states than they do to Congress itself. See 451 U.S. at 652-53.

takably" evidenced its intent that the states are to have such power.[55]

As the court below had no difficulty in concluding (A31), Congress plainly evidenced in the Douglas Amendment its intent to confer upon the states authority to control interstate commerce in the area of out-of-state holding company acquisitions of their local banks. In the Amendment, Congress purposefully put aside our general federal model because of strong concern over bank holding company expansion through interstate commerce to the detriment of local interests; Congress' clear intent was that the states should have authority to control the acquisition of their local banks in accordance with their own local policies (see pp. 10-13, above). This case thus involves precisely the sort of clear expression of "congressional policy" that the Court generally has sought.[56] To assert—as petitioners do—that ordinary Commerce Clause principles continue to apply to the states' regulation of out-of-state holding company acquisitions of their banks simply is to ignore Congress' express policy determination and to deny the states the very authority that Congress intended them to have.[57]

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[55]*South-Central Timber Dev. Co.* v. *Wunnicke*, 104 S.Ct. 2237, 2242 (1984); accord, *e.g.*, *United States* v. *Public Util. Comm'n*, 345 U.S. 295, 304 (1953).

[56]See *South-Central Timber Dev. Co.* v. *Wunnicke*, *supra*, 104 S.Ct. at 2242.

[57]Petitioners (Pet. 6) imply that recent legislative proposals cast doubt on the scope of the state authority conferred by the Douglas Amendment. However, this Court has repeatedly stressed that "unsuccessful attempts at legislation" provide no reliable guide to Congress' intent, especially where, as here, the issue is the intent of a different Congress that acted years before the unsuccessful legislative effort. See, *e.g.*, *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 332 n.24 (1981); *Fogarty* v. *United States*, 340 U.S. 8, 12-13 (1950). In fact, in addressing the principal recent proposal to amend the Douglas Amendment, the chief sponsor expressly acknowledged that Congress did "*not* intend to express or imply any disagreement with the second circuit's interpretation of the present Douglas amendment or otherwise suggest an opinion limiting the scope of authority conferred on the States in the original Douglas amendment nearly 30 years ago." 130 Cong. Rec. S11153 (daily ed. Sept. 13, 1984) (remarks of Senator Garn).

Petitioners argue (*e.g.*, Pet. 16), to be sure, that there is no evidence that Congress specifically contemplated state legislation that distinguishes among out-of-state holding companies in removing the Douglas Amendment's general prohibition on interstate acquisitions. But this Court has never held that a congressional grant of authority to the states, such as the Douglas Amendment, is limited by the particular types of state legislation that Congress expressly mentioned.[58] On the contrary, the Court established long ago that where Congress has made clear its intent to empower the states to control an aspect of interstate commerce, that grant of authority is "subject *only* to the exceptions *expressly* provided for."[59]

Consistently with this principle, the Court recently rejected an attempt to read into the McCarran-Ferguson Act—Congress' unrestricted grant to the states of authority over insurance—a limitation on discriminatory state action that Congress had nowhere expressed.[60] Congress having given the states full authority to regulate insurance without evidencing any intent to limit that authority, this Court refused to imply any such limitation.[61] As a result, petitioners' present argu-

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[58]The cases cited by petitioners (Pet. 18) reflect no such limitation: *Sporhase* v. *Nebraska*, 458 U.S. 941, 959-60 (1982), and *New England Power Co.* v. *New Hampshire*, 455 U.S. 331, 341 (1982), merely involved savings clauses that Congress had provided for *otherwise valid* state law; and in *South-Central Timber, supra*, 104 S.Ct. at 2243, Congress had not acted at all with respect to the relevant commerce.

[59]*Prudential Ins. Co.* v. *Benjamin, supra*, 428 U.S. at 431 (emphasis added).

[60]See *Western & S. Life Ins. Co.* v. *State Bd. of Equalization, supra*, 451 U.S. at 652-53. It was argued that the Court should read into the McCarran-Ferguson Act an exception for a retaliatory state tax that discriminated among out-of-state insurers; the Court could "find no such limitation in the language or the history of the Act." *Id.*

[61]See *id.* The court below properly followed the same approach in rejecting petitioners' contention that the court should read into the Douglas Amendment an exception prohibiting regional state statutes such as the present Acts (A29-A30).

ment—that the Douglas Amendment should be construed only to permit those forms of state legislation that Congress expressly contemplated—does not merely fail to demonstrate any conflict between this Court's Commerce Clause precedents and the decision below but, quite the contrary, is directly at odds with this Court's precedents.[62]

Indeed, this case presents even less of a Commerce Clause issue than any of the Court's prior decisions sustaining state legislation enacted pursuant to congressionally conferred authority. As the court below recognized (A29), the Connecticut and Massachusetts Acts do not restrain interstate commerce; they serve to promote it.[63] If the Acts were struck down, there would be no increase in interstate acquisitions of Connecticut and Massachusetts banks; on the contrary, the Douglas Amendment's general prohibition would control once more, and *no* such interstate acquisitions could occur.

Connecticut and Massachusetts have done nothing more than exercise their authority under the Douglas Amendment—as this Court stated in the *Lewis* case—"to *permit* expansion across state lines where it otherwise would be federally prohibited" (see p. 11, above).[64] The decision below

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[62]Petitioners' notion of minute specificity would, of course, be simply unworkable and would frustrate legitimate congressional efforts to grant the states authority to control a particular aspect of interstate commerce. Congress cannot be expected to anticipate the variety of policy choices that the states could make. See, *e.g.*, pp. 15-16, above. Nor is it important for Congress to have done so; rather, it is important only that Congress clearly evidences its intent to allow the states' policies to control in the relevant area, as it in fact did in the Douglas Amendment.

[63]Petitioners' tortured efforts to argue otherwise (Pet. 23) are patently specious; petitioners cannot avoid the fact that the Acts *facilitate* interstate acquisitions—such as those at issue here—that the Douglas Amendment otherwise would bar.

[64]Petitioners' claim (Pet. 21) that the Acts are particularly "objectionable" because they supposedly reflect "concerted action" by a group of states is sheer makeweight in light of Congress' grant of plenary authority to the

sustaining the States' action is entirely consistent with *Lewis* as well as the Court's other relevant Commerce Clause precedents.[65] There is, therefore, no need for review by this Court of petitioners' Commerce Clause claim.

2. Petitioners' Compact Clause claim has no more merit. This Court has consistently held that the Compact Clause applies only to "agreements that are 'directed to the formation of any combination *tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.*'"[66] Recognizing that the Compact Clause accordingly defines "the proper balance between federal and state power," the Court has established that "[t]he relevant inquiry must be one of impact on our federal structure."[67] The Connecticut and Massachusetts Acts plainly do

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states in the Douglas Amendment. In the first place, nothing in the Amendment's language or history precludes a state from acting, if it chooses, with other states in removing the general federal prohibition. Equally important, however, there is no finding of concerted action in this case: Connecticut and Massachusetts each individually passed its own statute, each individually administers its statute, and each remains free individually to repeal its statute at any time (see pp. 3-4, above).

[65]The decision below certainly presents no conflict (cf. Pet. 15, 16) with the *Lewis* Court's observation that "it is doubtful" that the Douglas Amendment "authorizes state *restrictions* of any nature on *bank holding company activities*," 447 U.S. at 47 (emphasis added). Neither Act imposes any new "*restrictions*" on bank holding company activities; each merely involves an exercise of the power that the *Lewis* Court expressly recognized the Amendment confers on the states—that is, the power "to create exceptions" to the general federal prohibition on interstate acquisitions. *Id.*

[66]*E.g.*, *New Hampshire* v. *Maine*, 426 U.S. 363, 369 (1976) (quoting *Virginia* v. *Tennessee*, 148 U.S. 503, 519 (1893)) (emphasis added).

[67]*United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 471 (1978). The very reason for the Compact Clause's requirement of congressional consent is "to check any infringement on the rights of the *national* government." J. Story, Commentaries on the Constitution ¶ 1403 (1833) (emphasis added).

not offend the Compact Clause as thus understood.[68]

The Court of Appeals conducted the "relevant inquiry" required by this Court's decisions and determined that the Acts do not "in any way increase the political power of the New England states or encroach upon or interfere with the just supremacy of the United States" (A32). Petitioners do not directly challenge that conclusion; nor could they reasonably do so.[69] The "proper balance between federal and state power" over interstate bank holding company acquisitions was established *by Congress* in the Douglas Amendment, which authorized the states to remove the federal bar to such acquisitions "to the degree" they so choose. The states' exercise of the authority expressly conferred by Congress plainly does not increase their political power vis-a-vis the federal government. As a result, the Connecticut and Massachusetts Acts pose no

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[68]In fact, the Connecticut and Massachusetts Acts do not involve an "Agreement or Compact" of any kind; each Act was a result of independent legislative action (see pp. 3-4, above).

[69]Petitioners' suggestion (Pet.27) that the Connecticut and Massachusetts Acts interfere with federal regulatory authority simply is untenable. In the Douglas Amendment, Congress *allocated* between the states and the Federal Reserve Board authority over interstate acquisitions, granting the Board the limited power to review acquisitions otherwise permitted by state law in order to ensure that such acquisitions generally are consistent with the public interest. See 12 U.S.C. § 1842 (requiring Board approval of both interstate and intrastate bank holding company acquisitions of banks). The states' exercise of their allocated authority plainly does not interfere with the Board's limited authority to review interstate acquisitions that state law expressly permits.

Nor do the Acts "undercut[] . . . federal policy" regarding the rescue of failing banks, as petitioners claim (Pet. 27 n.43, 28). Congress expressly excluded from the scope of the Douglas Amendment federally-assisted failing bank acquisitions and thereby unambiguously reestablished federal supremacy in this limited area. 12 U.S.C. § 1823(f)(4)(i). Accordingly, neither the Douglas Amendment nor the challenged state statutes would prohibit "New England bank holding companies from acquiring any [financially-troubled] non-New England banks . . . ."

substantial issue under this Court's settled Compact Clause precedents.[70]

Unable to present any viable Compact Clause claim under this Court's established "inquiry," petitioners assert alternative theories that are both irrelevant and misconceived. First, petitioners claim (Pet. 25) that the challenged statutes "act[] as a barrier to harmonious, voluntary cooperation among the states" and "prevent[] a uniform approach to interstate banking." That simply is not the case. The "barrier" about which petitioners complain was imposed *by Congress* in the Douglas Amendment in order to enable the states to apply their own disparate policies to interstate acquisitions of their own local banks (see pp. 10-14, above). Connecticut and Massachusetts merely have exercised their granted authority to remove the federal barrier to the degree consistent with their own local policies. No prior decision of this Court has held such congressionally authorized state action subject to the Compact Clause.

Second, petitioners complain (Pet. 26) that the Acts represent an "effort of Connecticut and Massachusetts to aggrandize themselves"—economically and politically—"at the expense of other States." However, in terms of any possible "economic" aggrandizement, this Court previously has confirmed that, unless the economic effect of challenged state action "transgresses the bounds of the Commerce Clause," the federal structure, with which the Compact Clause is exclusively concerned, is not implicated.[71] The Connecticut and Massachu-

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[70]Petitioners are flatly wrong in arguing (Pet. 27) that the Acts "creat[e] a new level of regulation." Neither Act creates any regional or multi-state regulatory authority; each state regulates interstate acquisitions of its local banks solely through its own existing bank regulatory authorities (see A99, A101-02). Thus, the Acts "neither project a new presence onto the federal system nor alter any state's basic sphere of authority." *United States Steel Corp.* v. *Multistate Tax Comm'n*, *supra*, 434 U.S. at 469 n.22.

[71]*United States Steel Corp.* v. *Multistate Tax Comm'n*, *supra*, 434 U.S. at 478.

setts Acts plainly satisfy this Court's Commerce Clause precedents (see pp. 19-23, above), and petitioners' theory of "economic" aggrandizement is therefore misconceived.

As for petitioners' claim of "political" aggrandizement, it is equally infirm. In a strained effort to link the commercial impact of the Connecticut and Massachusetts Acts to this Court's Compact Clause precedents, petitioners assert (Pet. 26) that the Acts are "at [their] core a political act" that increases the "political power of [New England] states to the detriment of the excluded states." But nowhere do petitioners explain (cf. Pet. 26) how any state's "political power" is in fact augmented by these statutes. Nor could they do so. Both Acts deal only with *private* corporate transactions, namely, interstate bank holding company acquisitions. Such legislation involves no threat to the sovereignty of any state—as the court below plainly recognized (A32).[72] Petitioners' theory of "political" aggrandizement is entirely illusory.[73]

Petitioners cite no case—nor is respondent aware of any—in which this Court has invalidated state legislation under the Compact Clause; and this case presents far less compelling grounds for review than those presented in any prior Compact

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[72]For this reason, petitioners' reliance on *dictum* in *Rhode Island* v. *Massachusetts*, 37 U.S. (12 Pet.) 657 (1838) is wholly misplaced. That decision, which affirmed the Supreme Court's original jurisdiction over state boundary disputes, merely observed that the parties could have resolved their differences by a compact approved by Congress. Boundary disputes undoubtedly threaten "the derangement of [the contending states'] federal relations with other states of the Union, and the federal government" because they concern the affected states' very sovereignty. *Id.* at 724. No such threat to any state's sovereignty in its federal relations with any other state or the federal government is presented by the Acts at issue here, which concern only private corporate transactions.

[73]In any case, the relevant inquiry under the Compact Clause is not whether the challenged state action constitutes a "political act;" rather, as this Court has held, "the test is whether the [Acts] enhance[] state power *quoad* the National Government." 434 U.S. at 473. As seen (pp. 24-25, above), the Connecticut and Massachusetts Acts plainly do not have such an effect.

Clause case decided by this Court. The Compact Clause serves to prevent the states from usurping federal authority (see p. 23, above). Here, Connecticut and Massachusetts have not even arguably done so; indeed, the relevant "balance between federal and state power" has been defined expressly by Congress in the Douglas Amendment. As a result, there is no reason for review of the Second Circuit's unanimous determination that the Connecticut and Massachusetts Acts do not violate the Compact Clause.[74]

3. In the final analysis, the decision below simply does not present any significant constitutional issue that warrants this Court's consideration.[75] The essential issue raised by petitioners—whether the acquisition of local banks by out-of-state bank holding companies should be subject to usual federal

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[74]Amicus Chase Manhattan also observes (Br. 19) that certain agreements among states have "been said to fall" under the Treaty Clause, Art. I, § 10, cl. 1, but it understandably refrains from arguing that any issue under the Treaty Clause has been properly presented to this Court or to the court below. See p. 8 n. 15, above; *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970) (issues "neither raised before nor considered by the Court of Appeals" normally will not be considered). In any case, the Treaty Clause generally restrains state legislation only on subjects entrusted exclusively to the federal government, such as the power to negotiate treaties with foreign nations, to declare and wage war, and to coin money. See *Barron* v. *Baltimore*, 32 U.S. (7 Pet.) 243, 248 (1833), cited in *United States Steel Corp.* v. *Multistate Tax Comm'n*, *supra*, 434 U.S. at 466 n. 18; *Ford* v. *Surget*, 97 U.S. 594, 603 (1878). No such issue is even remotely presented here.

[75]Nor—despite petitioners' claims (Pet. 13)—is review required because the Board lacks "definitive guidance" as to the constitutionality of statutes such as the Connecticut and Massachusetts Acts. The Court of Appeals has fully addressed petitioners' claims, found them plainly untenable in light of the Douglas Amendment, and provided an "authoritative" judicial resolution (cf. Pet. 13) of the constitutional issues surrounding the Acts that is consistent with all prior precedent. Indeed, as petitioners acknowledge (Pet. 11-12), the Board only recently approved another interstate acquisition involving Massachusetts and Rhode Island banking organizations, resolving the constitutionality of the Rhode Island interstate statute without any difficulty in light of the decision below.

principles of economic unity rather than controlled by the states' own policies—is not a legal issue to be decided by this Court. It is an issue of national policy that Congress in fact already has resolved.

When Congress enacted the Douglas Amendment almost thirty years ago, it determined that state—not federal—policies should control the interstate acquisition of local banks. If Congress wishes to change that determination, it can do so, altering the structure of interstate bank regulation for the future. However, it plainly is not for the courts to rewrite the Douglas Amendment so as to preclude the states from applying their own policies—as Congress clearly intended—to the acquisition of their local banks by out-of-state holding companies. As the Federal Reserve Board itself only recently emphasized, "[s]uch a sweeping reinterpretation of the Douglas Amendment should appropriately be accomplished only by legislative action."[76]

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[76] *Bank of New York Co., supra*, 70 Fed. Res. Bull. at 528.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Appendix A

1. Bank of Boston Corporation has no parent company.

2. Bank of Boston Corporation's partially owned subsidiaries and affiliates are as follows:

Alex Lawrie Computer Services Ltd.
Alex Lawrie Factors Ltd.
Alex Lawrie Receivables Financing Ltd.
Asesores Technico Administrativo, S.A. (Guatemala)
Banco de Boston Dominicano, S.A. (Dominican Republic)
Banco Del Ejercito, S.A. (Guatemala)
Banco Industrial S.A. (Guatemala)
Banco Latinoamericano de Exportaciones, S.A. (Panama)
Banco Latinoamericano de Exportaciones, S.A.
Big Canoe Corporation
Boston Bank Cameroon
Boston Industrial Lease (Queensland)
Boston Industrial Lease (S.A.)
Boston Leasing Limited
Boston Personal Reserve Insurance Company (Channel Islands)
Centrale de Livraison de Valeurs Mobilieres (Cedel S.A.) (Luxembourg)
Compania de Credito, S.A. (Honduras)
Confidential Invoice Discounting Limited
Confidential Invoice Factors Limited
Consolidated Leasing (Queensland)
Equila Particpacoese Empreendimento (Brazil)
Erato Transportation Inc. (Panama)
Euphrosyne Oceanic Transport S.A. (Panama)
Exteleasing, S.A. (Spain)
Factors A.G. (Switzerland)
First Leasing and Finance Ltd. (Australia)
First Leisure Corporation (United Kingdom)
Fundacion Dominicano de Desarollo (Dominican Republic)

IBJ Leasing Company, Ltd. (Japan)
Independent Factors Limited
Industrial Credit and Investment Corporation of India Ltd.
International Factors (Belgium)
International Factors Denmark A.S.
International Factors Espanola S.A. (Spain)
International Factors Group Holding S.A. (Luxembourg)
International Factors Ltd. (United Kingdom)
International Factors (Portugal) S.A.R.L.
International Lawrie Factors Holding, Ltd.
Inversiones Teatrales, S.A. (Honduras)
Nigerian American Merchant Bank Ltd.
Orient Factors (Hong Kong) Ltd.
Orient Factors Ltd. (Japan)
Pacific Lease (Hong Kong) Ltd.
Pacific Lease (Latin America) S.A. (Panama)
PLC Overseas Limited (Bermuda)
P.M.H. Boston (Brazil)
Primavera Country Club (Dominican Republic)
Private Development Corporation of the Philippines
Quissett Corporation
S.A. International Factors (Belgium)
Santo Domingo Tennis Club (Dominican Republic)
Servicios Comerciales e Industriales S.A. (Guatemala)
Societe Francaise de Factoring/International Factors France (France)
Sodril, S.A. (Brazil)
Sodril S.A. Correctora de Titulos e Valores (Brazil)
Tarjetas de Credito de el Salvador S.A.
Tarjetas de Credito de Guatemala S.A. (Guatemala)
Xenotron Limited (United Kingdom)